



JAN 15 1945

CHARLES ELMORE CROPLEY
CLERK

(19)

**In the
Supreme Court of the United States**

No. 773

OILS, INC., an Oklahoma Corporation,
Petitioner,

VERSUS

G. T. BLANKENSHIP; DAISY D. BLANKENSHIP, wife of G. T. Blankenship; E. S. HANSBERGER; M. E. TRAPP; DEAN M. STACY; HAROLD F. YOUNG; LOU SHEPHERD; TRAPP & BLANKENSHIP, a co-partnership composed of M. E. Trapp and G. T. Blankenship; NATIONAL BOND & MORTGAGE CO., an Oklahoma corporation; ROYALTY HOLDING CO., a Delaware corporation; ROYALTY SERVICE CORP., LTD., a Delaware corporation; and EQUAL ROYALTY CO., a Delaware corporation,

Respondents.

ANSWER BRIEF OF RESPONDENT, M. E. TRAPP

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January, 1945.

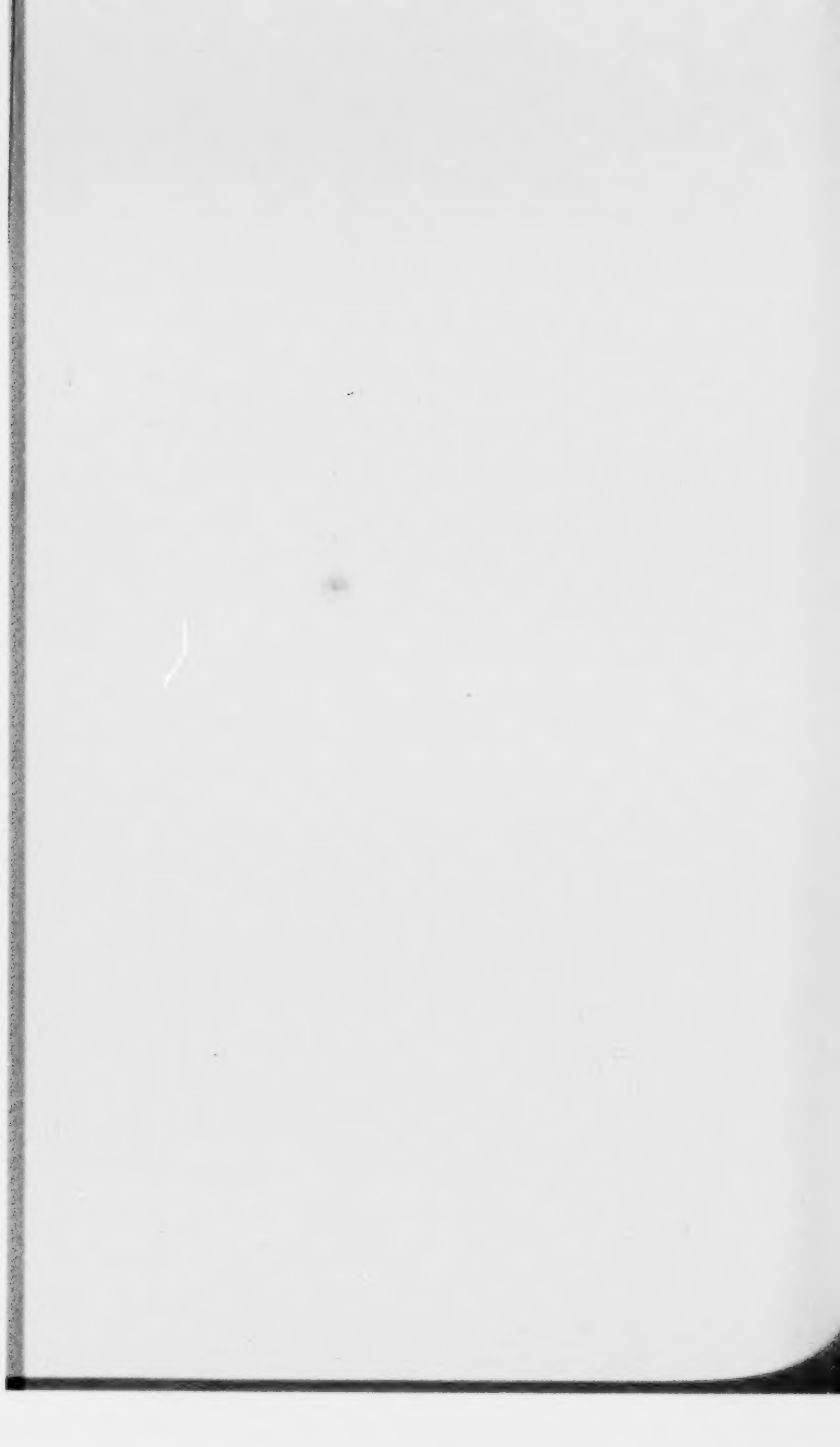
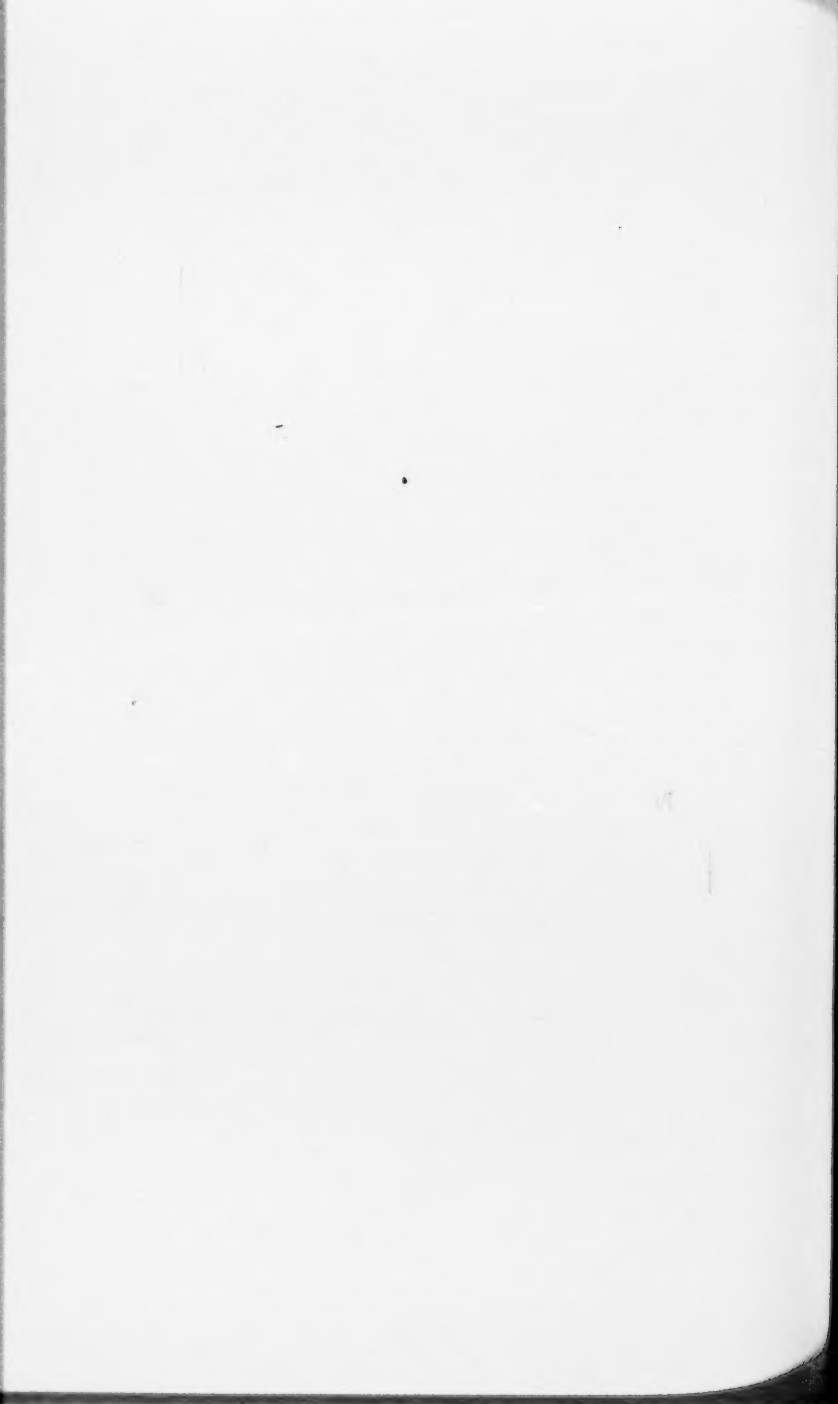


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V E R S U S

G. T. BLANKENSHIP; DAISY D. BLANKENSHIP, wife of G. T. Blankenship; E. S. HANSBERGER; M. E. TRAPP; DEAN M. STACY; HAROLD F. YOUNG; LOU SHEPHERD; TRAPP & BLANKENSHIP, a co-partnership composed of M. E. Trapp and G. T. Blankenship; NATIONAL BOND & MORTGAGE Co., an Oklahoma corporation; ROYALTY HOLDING Co., a Delaware corporation; ROYALTY SERVICE CORP., LTD., a Delaware corporation; and EQUAL ROYALTY Co., a Delaware corporation,

Respondents.

ANSWER BRIEF OF RESPONDENT, M. E. TRAPP

The Circuit Court in its opinion has stated the facts and the issues clearly and succinctly. There is little that can be added to clarify the issue before the Court.

The petitioner, in his statement of the case and his Specification of Error, also in his argument, continues to use

legal terms that have both a general and a specific meaning, thereby adding to his own confusion in discussing the issues so ably covered in the opinion of the Circuit Court.

The term "subject matter" may mean the "right of action," or it may mean the object or property involved in the action. The term "*res*" has a general and a limited meaning. The "right of action" often is called the *res*, which is a general use, but in a limited sense, the *res* is "any object of right other than the right of action." (1).

A proceeding is not ancillary to the power or jurisdiction of the court over "a right of action." The proceeding is ancillary only to the power or jurisdiction of the Court, exercised in direct relation to property, or assets actually or constructively drawn into the Court's possession or control by the principal suit. No proceeding is ancillary, except where it has a direct relation to "an object of right other than the right of action" actually or constructively drawn into the Court's possession or control by the principal suit. (2).

The Circuit Court in its opinion clearly recited the rule that:

"The test of whether a suit is ancillary is whether it has direct relation to property or assets actually or constructively drawn into the court's possession or control by the principal suit."

There are three categories of recognized ancillary jurisdiction:

(1) Blacks Law Dictionary.

(2) Fulton National Bank of Atlanta v. Hozier, et al., Receivers, 267 U. S. 276, 54 Supreme Court 261; 69 Law Edition 609, and other cases cited by the Circuit Court in its opinion.

(1) When a "right of action" is reduced to a judgment the judgment is "an object of right other than the right of action," or a res, in a restricted sense, and the court, having jurisdiction of its judgment, can by ancillary proceedings enforce the same or protect the same by ancillary proceedings. (3).

This is not an action to enforce the judgment or decree in the principal action, Number 461. Petitioner refers to orders of the Court in the principal action and attempts to class said orders, or the directions to the Court's receiver, as judgments and decrees of the Court, in which the petitioner is in error.

(2) A Federal Court, which has taken custody or control of property in a proceedings, of which it has jurisdiction has ancillary jurisdiction of a subordinate suit or proceeding affecting such property. (4).

This is an action *ex delicto* and does not involve any property actually or constructively drawn into the Court's possession or control by the principal suit.

(3) A Federal Court, which has appointed a receiver in a proceeding of which it has jurisdiction, has

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- (3) Julian v. Central Trust Company, 193 U. S. 93, 48 Law Edition 629, 24 Supreme Court Report 399;
 Milwaukee and M. E. Co. v. Milwaukee St. P. R. Co., 2 Wall 609-613, 17 Law Edition 886-895;
 Wabash R. Co. v. Adelbert College, 208 U. S. 38, 52 Law Edition 379, 28 Supreme Court Report 182;
 Hoffman v. McClelland, 264 U. S. 552, 62 Law Edition 845, 44 Supreme Court Report 407;
 Cincinnati, Indianapolis and Western R. R. Co. v. Indianapolis Union R. R. Co., 270 U. S. 106, 70 Law Edition 490.
- (4) Wabash R. R. Co. v. Adelbert College, 208 U. S. 38, 54;
 Morgan's Lc. and Texas R. R. and S. S. Co. v. Texas Central Ry. Co., 137 U. S. 171, 201;
 Murphy v. John Hoffman Co., 211 U. S. 562, 553;
 Barnett v. Mayes, 10 Cir., 43 F. (2d) 521, 526-528;
 Cited by the Circuit Court.

jurisdiction to entertain a suit or proceeding to collect or recover assets. (5).

But an action against third persons, persons not parties to the receivership action, and not officers of the court, over property or funds not in the actual or constructive possession of the court, but held adversely by said third persons, must be a plenary action. An action involving the administration of funds or property in the actual or constructive possession of the receiver, or the court, is a summary or ancillary proceedings. In determining whether the court has actual or constructive possession of the property or assets the distinction is made, upon the fact as to whether the possession or claim of third persons arose prior to or subsequent to the appointment of the receiver. If the claim and possession of said funds or property occurred prior to the appointment of the receiver, it will necessarily be a plenary action. While if said possession and ownership or claim occurred after the appointment of the receiver, it may proceed summarily by a petition for a rule to show cause in the receivership proceedings (6).

(5) *White v. Ewing* 159 U. S. 36, 38, 39;

Green-Boots Constr. Co. v. Hays, 10 Cir., 56 F. (2d) 829, 830;

Goldman v. Staten Island Nat. Bank & Trust Co., 2 Cir., 98 F. (2d) 496, 497;

Union Guardian Trust Co. v. Detroit Trust Co., 6 Cir., 72 F. (2d) 120, 121;

Rockwood v. Fashay, 8 Cir., 6 F. (2d) 625, 627.

Cited by the Circuit Court.

(6) *Smith on Receivers*, Second Edition, Section 54, page 227;

Clark on Receivers, Second Edition, page 797, par. 584;

Cyc. 84, page 213;

Cramer v. Felton, 10 C. C. A. 28, 22 U. S. App. 313, 61 F. 731;

Hook v. Bosworth, 12 C. C. A. 208, 24 U. S. App. 341, 64 F. 443;

Sullivan v. Colby 18 C. C. A. 193, 34 U. S. App. 432, 71 F. 460.

This action is to recover against the respondent, M. E. Trapp, a money judgment and no wise could it be said that it is in direct relation to any funds or property drawn in actual or constructive possession or control of the court in the principal suit.

Further, if said action were ancillary, under this category, as soon as the original action was terminated and the receiver discharged, the ancillary proceedings would necessarily fall (7).

The rule, stated by the Circuit Court, covers all three categories since a judgment is "an object of right other than a right of action," the *res* in a restricted sense, a thing, property or asset. The petitioner, in his statement of the case or his argument, does not attempt to show that there is property or assets involved in this proceedings, over which the court in the principal action had actual or constructive possession or control. The petitioner in this cause does not allege or state facts which show that there is property or assets over which the court, in the principal suit, Number 461 Civil, had actual or constructive possession, or that this is an action to enforce, interpret or protect a judgment or decree of the court in the principal action. Therefore, the petition shows upon its face that the Court does not have juris-

(7) *Johnson v. Thomas*, D. C. Tex., 16 F. Supp. 1019;

In re Volland, 7 Cir., 83 F. (2d) 680, 681;

In re Converse-Hough & Co., Inc., D. C. N. Y., 27 F. (2d) 368;

Cabaniss v. Reco Min. Co., 5 Cir., 116 F. 318, 323;

Cited by Circuit Court under point number (9).

diction, and the judgment of the Circuit Court should be affirmed and the writ of *certiorari* denied.

Respectfully submitted,

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January, 1945.

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OILS, Inc., an Oklahoma Corporation,
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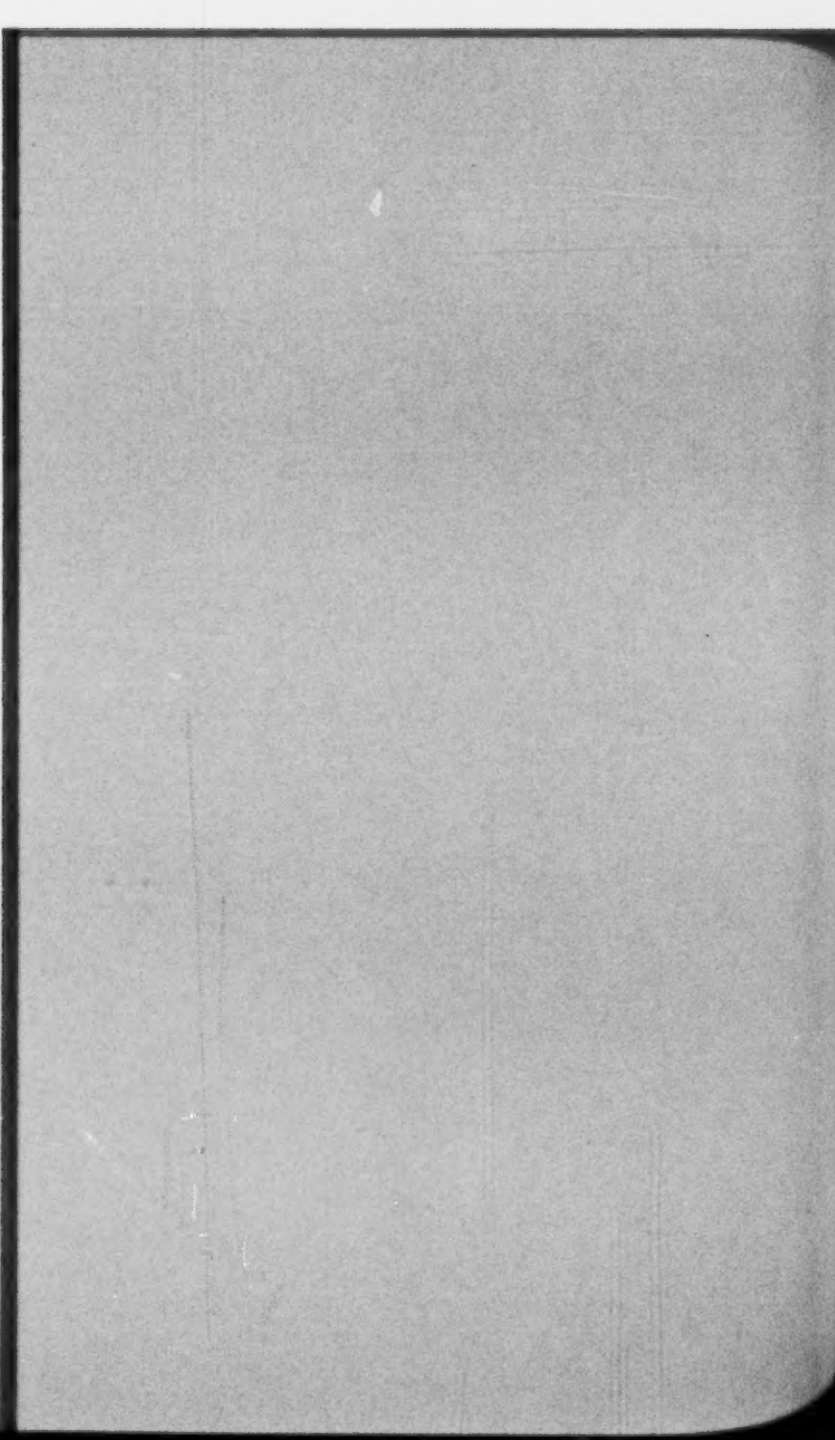
G. T. BLANKENSHIP, ET AL.,
Respondents.

**BRIEF OF RESPONDENTS G. T. BLANKENSHIP,
DAISY O. BLANKENSHIP, LOU SHEPHERD, NA-
TIONAL BOND AND MORTGAGE CO., ROYALTY
HOLDING CO., OIL ROYALTIES, INC., AND EQUAL
ROYALTY CO. IN OPPOSITION TO PETITION.**

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Of Counsel.

January, 1945.







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OPINIONS BELOW

The judgment of the District Court dismissing the action without prejudice for want of jurisdiction is dated November 26, 1943 (R. 45). The opinion of the Circuit Court affirming is dated October 25, 1944 (R. 49-54), and is officially reported in 145 Fed. (2d), Advance Sheet No. 5, 354.

GENERAL STATEMENT

Hopler Action, No. 461 Civil

On May 23, 1940, A. P. Hopler, et al, as minority stockholders of the Farmers Mutual Royalty Syndicate, Inc., hereinafter referred to as "Farmers Mutual," commenced an action in the District Court of the United States for the Western District of Oklahoma, against said Farmers Mutual, Oils, Inc., a corporation the petitioner here, Farmers Royalty Holding Company, a corporation, National Bond and Mortgage Co., a corporation, Harry Culver, Victor M. Locke, Jr., Maynard L. McLain, Bert Shepherd, Gerald Shepherd, Roy Reynolds, Nina O. Thomas, and Culver & Shepherd, a co-partnership composed of Harry Culver and Bert Shepherd, being Cause No. 461 Civil, and hereinafter referred to as the "Hopler Case." The bill of complaint appears in the record at pages 20 to 29.

On September 29, 1941, findings of fact and conclusions of law were filed. The case was re-opened, additional evidence introduced, and on January 29, 1942, amended and additional findings of fact and conclusions of law were filed. The original, amended, and additional findings of fact and conclusions of law are not a part of this record.

On January 24, 1942, F. M. Petree was appointed receiver of the Farmers Mutual and the petitioner. This order is not a part of the record. On February 18, 1942, a decree was made and entered in said cause, copy of which appears in the record at pages 30 to 40. Said decree, as to the order appointing a receiver, contains this language:

"The order of the Court appointing F. M. Petree as Receiver of the Farmers Mutual Royalty Syndicate, Inc., and the Oils Incorporated is based upon the findings and conclusions and this Decree. And the order is hereby approved and re-entered as of this date" (R. 30).

In said decree money judgments were awarded in favor of the petitioner against four individual defendants (R. 31-33), and in favor of the Farmers Mutual against eight individual defendants (R. 30-33).

Instant Action

On January 14, 1943, the instant action was brought by the Farmers Mutual Royalty Syndicate, Inc., an Arizona corporation; and Oils, Inc., an Oklahoma corporation; both by their Receiver F. M. Petree, Plaintiffs, against the respondents here. A copy of the petition appears in the record at pages 1 to 14.

The respondent, National Bond and Mortgage Company, was a party defendant in the Hopler Case. With the exception of this concern none of the parties defendant in the Hopler case is a party defendant in the instant case. The Farmers Mutual and the petitioner were defendants in the Hopler case.

On January 18, 1943, an application was filed in the Hopler case to terminate the receivership. (R. 42-43). On March 15, 1943, an order was made terminating the re-

ceivership, discharging him, and returning the properties and assets of the Farmers Mutual and the petitioner to their respective Boards of Directors. (R. 44-45).

On July 23, 1943, an application was filed in the instant case to substitute parties (R. 15-16), and on July 26, 1943, a substitution order was made and entered (R. 17). This order, in part, provides:

"Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the petitioners be and are hereby premitted to designate as parties plaintiff-Farmers Mutual Royalty Syndicate, Inc., an Arizona corporation, and Oils, Inc., an Oklahoma corporation; that the words 'both by the receiver, F. M. Petree' be stricken from the designation of the petitioners, and that said cause proceed with the substituted parties plaintiff" (R. 17).

Prior to the date of the above order the plaintiffs in the instant action were Farmers Mutual Royalty Syndicate, Inc., an Arizona corporation, and Oils, Inc., an Oklahoma corporation; both by their Receiver F. M. Petree, and by virtue of this order the name of the receiver was eliminated and the plaintiffs became Farmers Mutual Royalty Syndicate, Inc., an Arizona corporation, and Oils, Inc., an Oklahoma corporation.

The defendants in the instant case, the respondents here on whose behalf this brief is presented, challenged the jurisdiction of the District Court over the subject-matter. (R. 14-15). The challenge was sustained and the action dismissed. (R. 45).

ARGUMENT

Point I.

Jurisdiction, dependent or independent, must affirmatively appear from the allegations of the complaint.

Jurisdiction, dependent or independent, must affirmatively and distinctly appear from the allegations of the complaint, and can not rest upon presumptions or argumentative inferences drawn therefrom.

—*Norton v. Larney*, 266 U. S. 511, 69 L. Ed. 413;

Smith v. McCullough, 270 U. S. 456, 70 L. Ed. 682;

Mitchell v. Maurer, 293 U. S. 237, 79 L. Ed. 338;

McNutt v. General Motors Accept. Corp., 298 U. S. 178, 80 L. Ed. 1135.

Point II.

The instant action when brought was a new, independent one, and the district court was without jurisdiction over the subject-matter thereof. The Order of dismissal without prejudice was proper.

The instant action when brought, as reflected by the complaint, was a new, independent one, and the District Court had no jurisdiction over the subject-matter thereof. The order of the District Court was proper, and the rule announced by the Circuit Court in affirming the judgment of the District Court is in harmony with the decisions of this Court and not in conflict therewith.

- Raphael v. Trask*, 194 U. S. 272, 48 L. Ed. 973;
Riverdale Cotton Mills v. Alabama & G. Mfg.
Co., 198 U. S. 188, 49 L. Ed. 1008;
Hamer v. New York Railways Co., 244 U. S.
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pany, 255 U. S. 266, 65 L. Ed. 621;
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Cooperative Transit Co. v. West Penn. Electric
Co. (4th Cir.), 132 Fed. (2d) 720;
Smith v. Chase National Bank (8th Cir.), 84
Fed. (2d) 608;

Campbell v. Golden Cycle Min. Co. (8th Cir.),
141 Fed. 610.

The receivership of the two corporations, the petitioner and the Farmers Mutual, over their respective properties was not brought about on account of the insolvency of either and was not a liquidating receivership. None of the parties defendant in the Hopler case are parties defendant in the instant case, except the National Bond and Mortgage Company. The decree in the Hopler case is not under fire or attack in the instant case, and no effort is made therein to aid, enjoin, restrain, regulate, avoid, explain, or enforce said judgment; or to enforce or adjudicate liens upon, or claims to, property in the custody of the Court in the Hopler case actually or constructively. The instant case has no direct relation to any property or assets of said corporations, or either of them, actually or constructively drawn into the Court's possession or control by the Hopler suit. The instant action has all of the earmarks of a new and independent action as distinguished from a dependent or ancillary one, and the following rule announced by the Circuit Court, to-wit:

"A controversy can not be regarded as ancillary so that jurisdiction can be made to depend upon jurisdiction in original suit, unless it has direct relation to property or assets actually or constructively drawn into the Court's possession or control by the principal suit."

is correct.

Point III.

If the instant case was dependent when brought, the termination of the receivership, the discharge of the receiver, the return of the properties of the corporations to their respective boards of directors, their substitution and the elimination of the receiver from the action terminated the dependent jurisdiction, and the action became an independent one.

If the instant case was dependent when brought, the termination of the receivership, the discharge of the receiver, the return of the properties of the corporations to their respective Boards of Directors, their substitution and the elimination of the receiver from the action terminated the dependent jurisdiction, and the action became an independent one; and the decision of the Circuit Court of Appeals upon this phase of the question was proper and not in conflict with the decisions of this Court.

—28 U. S. C. A., Sec. 80 (Judicial Code, Sec. 37);

Boston & Montana Consolidated Copper & Silver Min. Co. v. Montana Ore Purchasing Co., 186 U. S. 631, 47 L. Ed. 627;

Cabaniss v. Reco Min. Co. (5th Cir.), 116 Fed. 318;

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U. S. 178, 80 L. Ed. 1135;

Indianapolis v. Chase National Bank, 314 U. S.
63, 86 L. Ed. 47.

CONCLUSION

The opinion of the Circuit Court clearly and correctly states the situation as reflected by the record, and the rules of law therein announced are correct, in harmony with the decisions of this Court, not in conflict therewith, and the petition should be denied.

Respectfully submitted,

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January, 1945.